



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2024] NZDT 39

APPLICANT **NC**

RESPONDENT **GT Limited**

The Tribunal orders:

The claim is dismissed.

Reasons

1. GT Limited (GT) recently ran a promotion where it gave away stickers for a particular dollar spend, and when a consumer had collected a specific number of stickers, they could exchange these for free [kitchenware].
2. GT ran out of stock before NC was able to exchange his stickers for [kitchenware]. He claims \$125.00 from GT (\$80.00 for the stickers and \$45.00 for the Tribunal filing fee) plus an unspecified value in punitive damages to be given to a charity of his choice.
3. I advised NC during the hearing that I did not have the power to award him the Tribunal filing fee of \$45.00. Section 43 of the Disputes Tribunal Act 1988 allows costs to be awarded in limited circumstances, none of which apply here.
4. The issues to be resolved are:
 - a. Did GT engage in conduct that was misleading or deceptive or that was likely to mislead or deceive, or was bait advertising?
 - b. If so, what loss did this cause to NC?

Did GT engage in conduct that was misleading or deceptive or that was likely to mislead or deceive, or was bait advertising?

5. The relevant law is the Fair Trading Act 1986 (**FTA**). Section 9 of the FTA provides that '*no person shall, in trade, engage in conduct that is misleading or deceptive, or is likely to mislead or deceive*'. Section 19 of the FTA provides that '*no person shall, in trade, advertise for supply at a specified price goods which that person does not intend to offer for supply, or does not have reasonable grounds for believing can be supplied by that person*'.

6. I do not find that GT engaged in conduct that was misleading or deceptive or that was likely to mislead or deceive, or 'bait' advertising. This is because I find that reasonable quantities of the [kitchenware] were available. The promotion ran from 31 July 2023 with an original end date for sticker issuance of 5 November 2023 and sticker redemption of 19 November 2023. It was not until three months into the promotion that stock became low. Forecasting requirements is not an exact science and I find that GT make a reasonable effort to forecast likely volumes so that it would have reasonably sufficient stock based on the evidence that it provided of its campaign planning. It's forecast was successful to a significant degree in that stock was available for more than three months only running out at the tail end of the promotion.
7. Further, the words '*while stocks last*' were qualified with the words '*stock is limited, we recommend you redeem as early as you can*' and '*Don't wait! Redeem as you go, only available while stocks last*'. These statements were clear and visible on the collecting booklets in which stickers were placed and highlight the message that the [kitchenware] might run out and not be available to all who collected stickers. It was not misleading.
8. I have had regard to the view of NC that this is the third time that GT has run such a promotion and that he also missed out previously. However, whether a previous promotion may have breached any provisions of the FTA has not been considered as he has not claimed any loss resulting from those.
9. I have also considered NC saying that GT made no effort to obtain more stock. However, it never made any promise that it would do such a thing, and I am not persuaded that it would be reasonable for it to do so given its clear message as per paragraph 7 above.
10. I have had regard to GT stopping issuing stickers on 1 November 2023, four days earlier than originally promoted. GT explained that its reason for this was to be open and transparent – that it wasn't right to offer stickers when it no longer had sufficient stock available for customers to redeem. I find this is a reasonable action for the same reasons as those outlined in paragraph 6 above.

If so, what loss did this cause to NC?

11. As I have not found that GT engaged in conduct that was misleading or deceptive, or bait advertising, I do not need to consider this question.
12. For the above reasons the claim is dismissed.

Referee: L Thompson
Date: 26 February 2024



Information for Parties

Rehearings

You can apply for a rehearing if you believe that something prevented the proper decision from being made: for example, the relevant information was not available at the time.

If you wish to apply for a rehearing, you can apply online, download a form from the Disputes Tribunal website or obtain an application form from any Tribunal office. The application must be lodged within 20 working days of the decision having been made. If you are applying outside of the 20 working day timeframe, you must also fill out an Application for Rehearing Out of Time.

PLEASE NOTE: A rehearing will not be granted just because you disagree with the decision.

Grounds for Appeal

There are very limited grounds for appealing a decision of the Tribunal. Specifically, the Referee conducted the proceedings (or a Tribunal investigator carried out an enquiry) in a way that was unfair and prejudiced the result of the proceedings. This means you consider there was a breach of natural justice, as a result of procedural unfairness that affected the result of the proceedings.

PLEASE NOTE: Parties need to be aware they cannot appeal a Referee's finding of fact.

Where a Referee has made a decision on the issues raised as part of the Disputes Tribunal hearing there is no jurisdiction for the District Court to reach a finding different to that of the Referee.

A Notice of Appeal may be obtained from the Ministry of Justice, Disputes Tribunal website. The Notice must be filed at the District Court of which the Tribunal that made the decision is a division, within 20 working days of the decision having been made. There is a \$200 filing fee for an appeal.

You can only appeal outside of 20 working days if you have been granted an extension of time by a District Court Judge. To apply for an extension of time you must file an Interlocutory Application on Notice and a supporting affidavit, then serve it on the other parties. There is a fee for this application. District Court proceedings are more complex than Disputes Tribunal proceedings, and you may wish to seek legal advice.

The District Court may, on determination of the appeal, award such costs to either party as it sees fit.

Enforcement of Tribunal Decisions

If the Order or Agreed Settlement is not complied with, you can apply to the Collections Unit of the District Court to have the order enforced.

Application forms and information about the different civil enforcement options are available on the Ministry of Justice's civil debt page: <http://www.justice.govt.nz/fines/about-civil-debt/collect-civil-debt>

For Civil Enforcement enquiries, please phone 0800 233 222.

Help and Further Information

Further information and contact details are available on our website: <http://disputestribunal.govt.nz>.